



**US Army Corps  
of Engineers®**  
New England District

696 Virginia Road  
Concord, MA 01742-2751

# PUBLIC NOTICE

**Date:** July 5, 2005

**Comment Due Date:** August 4, 2005

**In Reply Refer To:** Greg Penta

**E-mail:** gregory.r.penta@usace.army.mil

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## **PROPOSED REISSUANCE OF THE DEPARTMENT OF THE ARMY MAINE PROGRAMMATIC GENERAL PERMIT (PGP)**

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751 hereby proposes to reissue the statewide Maine Programmatic General Permit (PGP), pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities within the State of Maine. The existing PGP expires on September 29, 2005 and we proposed to reissue the PGP for another five years no later than this date. The reissued PGP will continue the expedited review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 and Section 103 of the Marine Protection, Research and Sanctuaries Act. This public notice is issued in accordance with 33 CFR 325.3(b) to coordinate reissuance of the PGP with Federal resource agencies, state agencies and the public.

Programmatic General Permits are encouraged under the President's plan as a way to streamline state and Federal regulatory programs. The New England District has already had success with streamlining these programs with the use of PGPs throughout New England. The Maine PGP was first implemented in 1995. Continued utilization of the very successful PGP process in place of the nationwide permits (NWP) provides benefits to the public, including simplifying the process and expediting decisions while maintaining environmental protection. This PGP authorizes activities formerly covered under the NWP program and currently covered under the existing PGP. The New England District's District Engineer suspended all nationwide permits in the six New England states on March 29, 2002. The suspensions will remain in effect for five years from March 18, 2002, which is the effective date of the reissued NWPs, unless rescinded by the Division Engineer.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this PGP. Projects with the potential for more than minimal effects will be subjected to Individual Permit review as detailed in 33 CFR Part 325 – Processing of Department of the Army Permits. All PGP authorizations will be subject to the applicability requirements, procedures, and conditions contained in the PGP documentation. Project eligibility under this PGP will fall into two categories: non-reporting projects (Category 1) and reporting projects requiring screening (Category 2).

Representatives of the Corps, state agencies, and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and National Marine Fisheries Service) will continue to review Category 2 activities as outlined within the ME PGP. The current document is located at [www.nae.usace.army.mil](http://www.nae.usace.army.mil). Please go to "Regulatory/Permitting," "State Programmatic General Permits" and then "Maine." You may also call Mr. Penta for a copy at (978) 318-8862.

Projects that do not meet the terms and conditions of the PGP will require an Individual Permit. The PGP reissuance does not alter the Individual Permit review procedures, but does clarify the Individual Permit procedures by clarifying the deadline for Federal resource agencies to provide their comments. The reissuance also does not alter the Federal exemptions, which are not necessarily the same as the State of Maine's exemptions. In addition, individual PGP authorizations are not valid until all other required Federal and state permits and/or certifications, as listed in the PGP, are obtained. Through interagency screening, the Corps will determine if the individual and cumulative adverse environmental impacts are minimal and whether a project may proceed under PGP authorization.

The proposed PGP does not affect activities authorized under the existing PGP that have commenced work prior to the re-issuance. Activities which have commenced (i.e., are under construction or are under contract to commence) prior to the re-issuance date of this PGP, in reliance upon the terms and conditions of the category under which it was authorized, shall remain authorized provided the activity is completed by the project-specific date the Corps provides to the permittee in the PGP authorization letter.

#### Essential Fish Habitat

In 1996, the Magnuson-Stevens Fishery Conservation and Management Act was amended to require the Federal fishery management councils (Councils) to designate Essential Fish Habitat (EFH) for all Federally managed fish species. The EFH applies to those waters and substrates necessary to fish for spawning, feeding, breeding, and growth to maturity. The EFH designations made by the Councils include most of Maine's coastal waters and most estuaries and rivers for up to 44 marine species. Section 305 (b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires that Federal agencies proposing to authorize, fund, or to undertake actions which may adversely effect EFH consult with National Marine Fisheries Service (NMFS) regarding the action. Accordingly, the Corps has and continues to consult with NMFS regarding the actions permitted under the PGP. For certain types of actions that will likely result in no more than minimal adverse effects to EFH individually and cumulatively, NMFS has issued a statement of General Concurrence in accordance with the requirements of 50 CFR 600.920(f), dated 3 March 2000. The General Concurrence covers EFH consultation requirements for those activities permitted by the Corps, which individually and cumulatively have no more than minimal adverse effects on EFH.

The General Concurrence was drafted to cover most activities that would fall under Category 2 of the PGP. The General Concurrence will cover those Category 2 actions in which NMFS concurs with the Corps determinations that the activity will result in no more than minimal adverse effects to EFH. In cases where NMFS does not concur with the Corps determination, NMFS will notify the Corps during interagency coordination meetings or by other established means that this General Concurrence will not cover a specific Category 2 action. The NMFS will periodically review its findings of General Concurrence and may revise or revoke a General Concurrence if new information indicates that the covered actions are having more than minimal adverse effects on EFH.

#### Water Quality Certification and Coastal Zone Management Consistency

The Corps is simultaneously requesting the Maine Department of Environmental Protection (DEP) determine whether to issue, deny or waive Water Quality Certification. The Maine DEP will issue a notice regarding their tentative determination; therefore, please send comments regarding WQC/Section 401 to the Maine DEP.

### Proposed Changes

We propose the changes and improvements listed on the following page. You can view the proposed Maine PGP that includes all of the proposed changes on our web site at <http://www.nae.usace.army.mil>. Please go to “Regulatory/ Permitting,” “Topics and Issues” and then “Proposed ME PGP.” You may also call Mr. Penta for a copy at (978) 318-8862.

### Comments

We are seeking public comment in order to properly evaluate the proposed PGP. Anyone wishing to comment is encouraged to do so in writing within the comment period specified in this notice. Submit your comments to: Mr. Greg Penta, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742-2751. Please contact Mr. Penta at (978) 318-8862 if you have any questions.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

Christine Godfrey  
Chief, Regulatory Division

## **PROPOSED CHANGES**

### **SECTION I – GENERAL CRITERIA**

1. General Criteria: Reword and restructure this section.

### **SECTION III - PROCEDURES**

1. A. State Approvals: Reword this section
2. B. Corps Authorizations, Category 1: Reword and restructure this section. This is proposed to state that project proponents seeking Category 1 authorizations should comply with this PGP's general conditions and other Federal laws, and consult with the Corps and/or outside experts when there is a high likelihood of the presence of resources of concern. Also proposed is to add the language that was formerly in General Condition 34, Enforcement.
3. B. Corps Authorizations, Category 2, Eligibility Criteria: This section was added.
4. B. Corps Authorizations, Category 2, Application Procedures: Reworded and restructured to clarify the application procedures. The information typically required was modified. One example is that all plans should show the NGVD 1929 equivalent for a project's vertical datum (MLW, MLLW or NGVD for tidal projects) with the vertical units, and that plans not use a local datum.
5. Section III, Procedures, B. Corps Authorizations, Category 2, Federal Screening Procedures. Reworded and restructured to discuss only screening procedures and eliminate application procedures. This now specifies time limits and requires Federal agencies to comment on affected resources within their area of expertise with written responses.
6. Section III, Procedures, B. Corps Authorizations, Category 2, Minerals Management Service (MMS) Review. This was reworded for clarity.
7. Section III, Procedures, B. Corps Authorizations, Category 2, Emergency Situation Procedures. This was rewritten to provide more precise procedures. The Federal resource agencies, the Maine Historic Preservation Commission and the tribes would each designate an emergency contact and an alternate. When an application for Category 2 work is received that the Corps determines is an "emergency," the Corps will fax the plans to the agency representatives, who would have sixteen business hours to notify the Corps if they have any comments on authorization of the project under the PGP.

### **SECTION IV – CORPS AUTHORIZATION**

1. Section IV, Corps Authorization: Category 3 (Individual Permit): This was reworded for clarity, as was the comment deadline for Federal resource agencies in response to the Public Notice.

### **SECTION V – PROGRAMMATIC GENERAL PERMIT CONDITIONS**

1. General Condition (GC) 1, Other Permits. This now mentions the state's requirement to obtain a Flood Hazard Development Permit issued by the town, if necessary.
2. GC 2, Federal Jurisdictional Boundaries. This condition now provides more details on jurisdictional boundaries and the resources used to perform delineations.
3. GC 3, Minimal Effects. These italicized words were added, "Projects authorized by this PGP shall have *no more than* minimal individual and cumulative adverse environmental impacts as determined by the Corps."
4. GC 5, Single and Complete Projects. Wording regarding the *Independent Utility* test was added.
5. GC 6, Permit On-Site. This new condition was added. It requires the permittee to ensure that a copy of the PGP and the accompanying authorization letter are at the work site (and the project office) whenever work is being performed.

6. GC 8, Historic Properties. This was reworded for clarity and the wording pertaining to screening procedures was removed.
7. GC 9, National Lands. The addition of National Marine Sanctuary and National Park is proposed.
8. GC 10, Endangered Species. At the first bullet, the U.S. FWS requested that we change “may affect” to “is likely to adversely affect.”
9. GC 11, Essential Fish Habitat. This condition was reworded for clarity. This would be added, “Any work in any aquatic habitats in the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration, shall not be authorized under Category 1 of the PGP and must be screened for potential impacts to EFH.” The wording “in the watershed” was removed, as this would encompass too large an area for Category 1 exclusion.
10. GC 16, Minimization. Propose this new wording, “Permittees may only fill those jurisdictional wetlands that the Corps authorizes to be filled and impact those wetlands that the Corps authorizes as secondary impacts. If not specifically authorized, any unauthorized fill or secondary impact to wetlands may be considered as a violation of the Clean Water Act.”
11. GC 17, Heavy Equipment in Wetlands. The majority of this condition would change. Heavy equipment shall not be stored, maintained or repaired in wetlands. Heavy equipment in wetlands shall either have low ground pressure (<3 psi), or shall not be located directly on wetland soils and vegetation; it shall be placed on swamp or timber mats, or other support structures that are less impacting with written Corps authorization. Swamp and timber mats and corduroy roads would be defined.
12. GC 18, Temporary Fill. One proposed change would state that we consider swamp or timber mats as fill when they’re removed immediately upon work completion. The Corps published its latest definition of fill material on May 9, 2002. The new definition promulgated at 33 CFR 323.2 states: “...the term fill material means material placed in waters of the U.S. where the material has the effect of: (i) Replacing any portion of a water of the U.S. with dry land; or (ii) Changing the bottom elevation of any portion of a water of the U.S.. (2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.”

This condition now clarifies that fill placed into waters of the U.S. (including wetlands) totaling greater than or equal to 5,000 SF in total area (i.e., the sum of permanent and temporary fill areas) exceeding the Category 1 threshold may not be discharged without written authorization from the Corps.

This condition was changed to also require restoration in accordance with GC 19, unconfined temporary fill authorized for discharge into flowing water (rivers and streams) to consist of only clean washed stone, temporary fill removal as soon as it is no longer needed, and that no temporary work may drain a water of the U.S. by providing a conduit for water on or below the surface.
13. GC 19, Restoration. This condition would be added to provide wetland restoration details. It is now required to stabilize disturbed areas with a wetland seed mix containing only plant species native to New England, control the introduction or spread of invasive plant species in disturbed areas, cut trees at ground level and not uproot in areas of authorized temporary disturbance to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area, and restore wetland areas where permanent disturbance is not authorized to their original condition and elevation, which under no circumstances shall be higher than the pre-construction elevation. Original condition is defined.
14. GC 20, Coastal Bank Stabilization. This condition was added. It requires projects involving construction or reconstruction/maintenance of bank stabilization structures to be designed to

minimize environmental effects, effects to neighboring properties, scour, etc. to the maximum extent practicable. It provides examples, references the Corps Coastal Engineering Manual and provides a web site to obtain the manual.

15. GC 21, Sedimentation and Erosion Control. This was changed to add hay bales to the listed types of erosion control management devices, and require their removal “in a timely manner.”
16. GC 22, Waterway Crossings. This condition had many changes. This was added to paragraph (a): “(NOTE: Areas of fill and/or cofferdams must be included in total waterway/wetlands impacts to determine applicability of this PGP).” Paragraph (b) includes wording from the Corps nationwide permits not allowing an activity to disrupt the necessary life-cycle movements of aquatic life species. The condition recommends open bottom arches, bridge spans or embedded culverts over traditional culverts for new permanent crossings. This condition also recommends installation methods and requires projects to maintain hydraulic connectivity and wildlife passage. It does not allow sliplining in Category 1, requires culverting of driveway crossings to at least municipal or State standards sufficient to prevent flow restriction, and requires crossings proposed by the ME DOT to conform to the MDOT Fish passage Policy and Design Guides. The condition also prohibits construction equipment from crossing streams without temporary bridges, culverts, or cofferdams.
17. GC 24, Spawning Areas. These italicized words were added, “Discharges of dredged or fill material, and/or suspended sediment producing activities, into known fish...” Also, “During all times of year, impacts to these areas...”
18. GC 25, Storage of Seasonal Structures. This was added, “These seasonal structures may be stored on the fixed, pile-supported portion of the structure that is seaward of MHW. This is intended to prevent structures from being stored on the marsh substrate and the substrate seaward of MHW. Seasonal storage of structures in navigable waters, e.g., in a protected cove on a mooring, requires Corps and local harbor master approval.”
19. GC 29, Inspections. The work notification form is no longer attached to the PGP, since we attach it to each Category 2 PGP authorization letter. The reference to the attached form would be removed from this condition.
20. GC 30, Maintenance. This condition was reworded for clarity. In addition, this wording is proposed, “Maintenance dredging includes only those areas and depths previously authorized and dredged. Some maintenance activities may not be subject to regulation under Section 404 in accordance with 33 CFR 323.4(a)(2). Information on mosquito ditching and maintenance is provided at [www.nae.usace.army.mil](http://www.nae.usace.army.mil). Go to “Regulatory/Permitting,” “Other.”
21. GC 35, Emergency situations. This was deleted and rewritten at Section III, Procedures, B. Corps Authorizations, Category 2, Emergency Situation Procedures.
22. GC 37, Duration of Authorization. It is proposed to reword this condition and add the following: “Activities authorized under Category 1 of this PGP that have commenced (i.e., are under construction) or are under contract to commence in reliance upon this PGP’s authorization will remain authorized provided the activity is completed within twelve months of the date of the PGP’s expiration date. Activities authorized under Category 2 of this PGP will remain authorized in accordance with the project-specific date that the Corps provides to the permittee in the PGP authorization letter.”
23. GC 38, Previously Authorized Activities. Paragraph (a) would be rewritten to read, “Activities completed under the authorizations of past PGPs that were in effect at the time the activity was completed will continue to be authorized by those PGPs.

## **SECTION VI - CONTACTS FOR MAINE PROGRAMMATIC GENERAL PERMIT:**

The contact list beginning on Page 16 was modified to add related websites and e-mail addresses. We have posted these changes to our web site at <http://www.nae.usace.army.mil>. Please go to “Regulatory/Permitting” and then click “Useful Links.”

## **APPENDIX A - DEFINITION OF CATEGORIES**

### **I. Inland Waters and Wetlands:**

#### **(a) New Fill/Excavation Discharges, Categories 1, 2 and IP**

Secondary impact areas now include *excavated* areas, in addition to the “drained, flooded, or cleared” areas. This now agrees with the NWP.

#### **(a) New Fill/Excavation Discharges, Categories 1 and 2**

We propose to add the following words to Category 1, “Swamp mats are considered as fill. (See General Condition (GC) 18.)” Category 2 would state, “Swamp mats filling any area  $\geq 4,300$  SF are reviewed in Category 2. (See GC 18.)”

#### **(a) New Fill/Excavation Discharges, Category 1**

These following requirements would be added to this category:

- In-stream work of up to 4,300 SF of fill below ordinary high water in waterways not designated as EFH for Atlantic salmon and performed in accordance with Maine Permit By Rule standards or a LURC permit.
- New permanent stream crossings shall comply with GC 22.
- Projects covered by a DEP Tier One permit with no cumulative impacts  $>15,000$  SF in inland wetlands from previous permits, unauthorized work, and/or other state permits.
- Subdivision fill complies with GC 5, Single and Complete Projects.”

The following exclusions are added to this category:

- Open trench excavation in flowing waters. See Condition 22.
- Work in waters designated as EFH for Atlantic salmon, unless the waterway is crossed with a span and footprints of the span abutments are outside ordinary high water with no more than 4,300 SF of associated wetland impact.
- Situations when a Special Inland Water or Wetland<sup>3</sup> (vernal pool) of any size may be impacted.
- Work in special aquatic sites<sup>4</sup> other than wetlands.
- Work within  $\frac{1}{4}$  mile of a Wild and Scenic River.
- Work in National Wildlife Refuges.

#### **(a) New Fill/Excavation Discharges, Category 2**

1. The following is proposed, “Projects with proactive restoration as a primary purpose with impacts of any area  $\geq 4,300$  SF. The Corps, in consultation with State and Federal agencies, must determine that net adverse effects are not more than minimal.”

2. We would add this to match the Nationwide Permits, “Specific activities required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.”

#### (b) Bank Stabilization, Category 1

We are considering reducing the threshold for bank stabilization projects from 500 feet to 100 feet, with the following new conditions,

- No work in special inland waters & wetlands<sup>3</sup> and special aquatic sites (SAS)<sup>4</sup>.
- No open trench excavation in flowing waters. See General Condition 22.
- No structures angled steeper than 3H:1V allowed. Only rough-faced stone or fiber roll revetments allowed.

#### (b) Bank Stabilization, Category 2

We are considering the following change, “Inland bank stabilization  $\geq 100$  FT long and/or  $\geq 1$  CY of fill per linear foot, or any amount with fill in wetlands.” The following statement would be removed, as it is obvious, “Other stabilization exceeding Category 1.”

#### I. Inland Waters and Wetlands, (c) Repair and Maintenance of Authorized Fills, Category 1 and

#### II. Navigable Waters, (b) Repair and Maintenance Work, Category 1.

1. Section I (c) Cat 1 would read, “\*Conditions of the original authorization apply, however minor deviations in fill design allowed<sup>6</sup>”. Section II (b) Cat 1 would read, “\*Must be rebuilt in same footprint, however minor deviations in structure design allowed<sup>6</sup>”.

2. We propose to add the following Endnote to the Endnotes/Definitions section. This is proposed because the existing Corps policy of allowing proponents to build coastal engineering structures in the same footprint discourages the reduction of the adverse impacts of the structure. Technology and understanding of coastal processes has changed; structures that are old enough to be considered grandfathered were built in ways that generally cause adverse impacts to navigable waters (e.g., increased scour associated with vertical structures). Rebuilding in the same footprint is an incentive for applicants to keep the same structure and not reduce the impacts, such as those listed in the conditions of the PGP for coastal bank stabilization.

“<sup>6</sup>Maintenance: Minor deviations in the structure’s configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards, which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.”

#### II. Navigable Waters

For the purposes of the PGP, Navigable Waters of the United States would be defined as follows:

“Waters that are subject to the ebb and flow of the tide and Federally designated navigable rivers (the Penobscot River, Kennebec River, and Lake Umbagog) (Section 10 Rivers and Harbors Act of 1899). The jurisdictional limits are the mean high water (MHW) line in tidal waters and the ordinary high water (OHW) mark in non-tidal portions of the Federally designated navigable rivers. For the purposes of this PGP, fill placed in the area between the mean high water (MHW) and the high tide line (HTL), and in the bordering and contiguous wetlands<sup>1</sup> to tidal waters are also reviewed in this Navigable Waters section.”

#### (a) Fill, Category 1.

We propose to add the following wording, similar to Nationwide Permit 15, to the PGP. This would allow the USCG to authorize Section 404 fill activities associated with bridge construction and thereby reduce the regulatory burden on the public associated with applying to two agencies.



“Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit. Causeways and approach fills are not included in this category and require Category 2 or Individual Permit review”.

(a) Fill, Category 2.

1. This currently allows, “Temporary tidal marsh impacts up to 1 acre. Instead, it would state, “Temporary fill or excavation <1 acre in special aquatic sites (SAS)<sup>4</sup>.”
2. This currently allows, “Permanent tidal marsh, mudflat, or vegetated shallows<sup>7</sup> fill up to 1,000 sf.” This would be reworded, “Permanent fill or excavation <1,000 SF in SAS<sup>4</sup>.”
3. This would be modified, “Proactive restoration projects with any amount of impact can be reviewed under Cat. II. The Corps, in consultation with State and Federal agencies, must determine that net adverse effects are not more than minimal.” The new statement is more specific, “Permanent fill and/or excavation  $\geq$ 1,000 SF in SAS<sup>5</sup> when associated with a project with proactive restoration as a primary purpose. The Corps, in consultation with Federal & state agencies, must determine that net adverse effects are not more than minimal.”
4. The following requirement, which is similar to the Nationwide Permits, is proposed: “Specific activities with impacts of any area required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.”

(a) Fill, Individual Permit

1. This category currently allows, “Temporary tidal marsh impacts over 1 acre.” Instead, it would allow, “Temporary fill or excavation  $\geq$ 1 acre in SAS.”
2. This category currently allows, “Permanent tidal marsh, mudflat, or vegetated shallows<sup>8</sup> fill over 1,000 sf.” It would be changed to, “Permanent fill or excavation  $\geq$ 1,000 SF in SAS<sup>4</sup> other than as specified in Cat. 2.”

(c) Dredging, Category 1

The following italicized words were added, “Maintenance dredging *for navigational purposes* <1,000 CY with upland disposal. *Includes return water from upland contained disposal area.*” This provision was also added, “No dredging in intertidal areas.”

(c) Dredging, Category 2

We propose to modify the provision to allow for better review of the impacts associated with sand mining and clarify that confined aquatic disposal is allowed in Category 2.

- *Current*: Disposal includes upland, open water or beach nourishment (above mean high water), only if material is determined suitable.
- *Proposed*: “Disposal includes 1. upland, 2. beach nourishment (above MHW) provided dredging’s primary purpose is navigation or sand is from an upland source and Corps, in consultation w/Federal and State agencies, determines the net adverse effects are not more than minimal; and 3. open water & confined aquatic disposal, if Corps, in consultation with Federal and State agencies, finds the material suitable.”

(d) Moorings, Category 1

The following italicized words are proposed, “Private, non-commercial, non-rental, single-boat moorings *authorized by the local harbormaster.*” The italicized words in this provision are

proposed, “Not located in a Federal Navigation Project *other than a Federal Anchorage. Moorings in Federal Anchorage not associated with a boating facility*<sup>7</sup>.”

#### (d) Moorings, Category 2

This was clarified with the substitution of the first two bullets below. The third bullet was added:

- Moorings associated with a boating facility<sup>7</sup>.
- Moorings that don’t meet the terms in Category 1 and don’t require an Individual Permit.
- Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits<sup>10</sup> of a Corps Federal Channel. (See Appendix B.) The buffer zone is equal to three times the authorized depth of that channel.

#### (e) Pile-Supported Structures and Floats, Category 1

This was reworded and restructured for clarity.

#### (e) Pile-Supported Structures and Floats, Category 2

1. This change is proposed, “Private ~~piers structures and~~ or floats ~~for navigational built to~~ access to waterway (seasonal and permanent).”
2. It’s proposed to include this in Category 2: “Expansions to existing boating facilities<sup>7</sup>.”
3. The following addition is proposed, “Compliance with the following is recommended, but not required:
  - $\leq 400$  SF in size, with attached floats totaling  $\leq 200$  SF.
  - Floats supported above the substrate during all tides where practicable.
  - Structures & floats are not positioned over vegetated shallows<sup>8</sup> and moored vessels are not positioned over SAS<sup>4</sup>.
  - Structures are  $\leq 4'$  wide and have at least a 1:1 height:width ratio<sup>11</sup>. Not located within the buffer zone of the horizontal limits<sup>8</sup> of a Corps Federal Navigation Project (FNP) (See App. B). The buffer zone is equal to three times the authorized depth of that FNP.
  - No structure extends across  $>25\%$  of the waterway width at mean low water.
  - No structure located within 25’ of any vegetated shallows<sup>9</sup>.
  - No structure located within 25’ of the riparian property boundary.”

#### (f) Miscellaneous, Category 1

“Coast Guard approved aids to navigation” was replaced with the following for clarity, “The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR part 66, Chapter I, subchapter C).”

#### (f) Miscellaneous, Category 2

The following changes are proposed, “Structures or work in or affecting tidal or navigable waters that are not defined under any of the previous headings *listed above*. Includes, but is not limited to, utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges ~~fills/abutments, etc., tunnels and horizontal directional drilling activities seaward of the MHW line.~~”

The following changes are proposed, “Shellfish/finfish (other than Atlantic salmon), or other aquaculture facilities ~~which are consistent with the Corps revised standard siting requirements and standard permit conditions dated 7/6/94, or as revised~~ with no more than minimal individual and cumulative impacts to environmental resources or navigation. Aquaculture guidelines are provided at: [www.maine.gov/dmr/aquaculture/index.htm](http://www.maine.gov/dmr/aquaculture/index.htm).”

(f) Miscellaneous, Individual Permit

The following would be added, “Shellfish/finfish (other than Atlantic salmon), or other aquaculture facilities with more than minimal individual and cumulative impacts to environmental resources or navigation. Aquaculture guidelines are provided at: [www.maine.gov/dmr/aquaculture/index.htm](http://www.maine.gov/dmr/aquaculture/index.htm).”

Endnotes

Endnote 1 previously defined waters of the U.S. in inland areas. Waters of the U.S. are now more fully defined at the beginning of the I. Inland wetlands and II. Navigable Waters sections of Appendix A. Bordering and Contiguous Wetlands are now defined in Endnote 1.

Endnote 2 previously defined EFH for Atlantic Salmon. This is now defined in General Condition 11. Water diversions are now defined in Endnote 2.

Endnote 3 previously discussed large impacts and mitigation requirements. Endnote 5 now explains discusses these requirements. Endnote 3 now defines Special Inland Waters and Wetlands.

Endnote 4 previously defined vernal pools. Vernal pools are now defined in Endnote 3. Endnote 4 now defines special aquatic sites.

Endnote 5 previously defined the National Wild/Scenic Rivers System in Maine. This is now discussed in General Condition 12. Endnote 5 now discusses large impacts and mitigation requirements.

Endnote 6 previously defined navigable waters, which is now defined at the beginning of Appendix A, II. Navigable Waters. Endnote 6 now defines maintenance. Minor deviations are defined. It’s stated that, “No seaward expansion for bulkheads or any other fill activity is considered Cat. 1 maintenance.”

Endnote 7 previously defined vegetated shallows. It now defines boating facilities.

Endnote 8 previously defined special aquatic sites. It now defines vegetated shallows.

Endnote 9 previously defined boating facilities, which are now defined in Endnote 7. Endnote 9 now discusses mooring locations.

Endnote 10 previously defined mooring locations. It now defines horizontal limits.

Endnote 11 previously defined brushing the flats, which is now defined in Endnote 12. Endnote 11 now discusses structure height above the substrate.